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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 143 OF 2007

IN

CRIMINAL REVISION APPLICATION NO.222 of 2007

Raigad Zilla Madhyamik Va Ucha
Madhyamik Vidya Sevak Sahakari
Patsanstha Ltd. Pen. .. Applicant

versus

Sudhakar Gopal Subhedar & ors. .. Respondents

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Mr.Sachin Manale for the applicant.

Mr.M.D. Modgi i/b Shri S.M. Oak for respondent no.1.

Ms.R.M. Gadhavi, APP for the State.

CORAM : D.G.KARNIK, J

DATED : 11th December 2007

P.C.:

1. Heard learned counsel for the parties.

2. By this application, the petitioner prays for condonation of a delay of 109 days in filing of the revision.

3. The reasons for condonation of a delay are mentioned in paragraph no.6 of the application wherein paragraph no.6, it is stated that the order of acquittal was passed on 13th November 2006 and thereafter Mr.Ashok Mhatre (who is the auditor of the petitioner society) applied for certified copy of the order which was delivered on 1st February 2007. Thereafter the society in its meeting dated 24th February 2007 resolved to challenge the order of revision and sent the papers to the advocate at Mumbai. It was however revealed that the papers were not complete for filing the revision and certified copies of the depositions were required. Therefore the petitioner applied for the certified copies and sent all the papers to the Advocate. In the process, there has been a delay of 109 days in filing of the revision.

4. Counsel for the respondent no.1 strongly opposing the application submitted that the averments made in paragraph no.6 are vague. Except for the date of the alleged meeting of the society dated 24th February 2007, no other dates have been mentioned. It is not mentioned when the certified copies of the depositions were applied and when they were received

and when the papers were sent to the Advocate in Mumbai for filing of the revision. He submitted that in any event, it was not necessary to have the certified copies of the depositions for drafting the memo of revision and filing the revision petition. The revision petition could have been drafted on the basis of ordinary copies of deposition and filed along with the certified copy of the decision. The petitioner has not even mentioned that it did not even posses the ordinary copies of the deposition as the carbon copies of the depositions of the witnesses were given to both the sides immediately as the evidence was recorded. Therefore no statement is made about the fact that the petitioner did possess the copies of the depositions of witnesses. The certified copies of the depositions of the witnesses wee never applies and therefore the copies are not produced and only vague averments are made without giving any dates.

5. Learned counsel for respondent no.1 also submitted that false statements have been made in the application for condonation of the delay. He invited my attention to the first sentence of paragraph no.6 wherein it is stated that certified copy of the order was delivered to Ashok Mhatre (auditor and representative of the petitioner society) on 1st

February 2007. He then invited my attention to the certified copy annexed to the revision application which shows that the certified copy was applied by the petitioner society on 27th April 2007 and was received on 30th April 2007. The revision petition was filed on 3rd May 2007. Counsel submitted that the certified copy which is allegedly applied by Ashok Mhatre, Auditor of the petitioner society was not the certified copy on the basis of which the present revision application was filed but it was filed on the basis of the certified copy which was applied on 27th April 2007 and received on 30th April 2007. The petitioner has not at all explained the delay in making the application for certified copy so late i.e. after more than five months of the date of the impugned order. He further submitted that the delay was sought explained on the basis of this certified copy which has not at all been filed in the court.

6. It is clear that the revision application has been filed on the basis of the certified copy applied on 27th April 2007 by the petitioner society. The order of acquittal was passed on 13th November 2006. Thus, there is a delay of more than five months in applying of the certified copy itself. There is not a whisper in the application why there

was such gross delay in applying the certified copy. The certified copy allegedly applied by Mr.Mhatre is not filed on record and the statement regarding that therefore cannot be accepted. In the circumstances, as the delay has not been explained and the petitioner has also made incorrect statements about the dates of application of the certified copy and the receipt thereof in the application for condonation of delay, the application deserves to be rejected.

8. Accordingly application is rejected summarily.

(D.G. KARNIK, J)